

# DECISION



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THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-204257, B-204257.2 DATE: November 4, 1981

MATTER OF: American Indian Law Center, Inc.

## DIGEST:

1. Where there is no dispute that awardees certified in their proposals that their organizations would satisfy the RFP's requirement for Indian control during contract performance, GAO has no basis to conclude that agency failed to enforce mandatory solicitation requirement for such certification.
2. Whether awardees fulfill their contractual commitments during contract performance is a matter of contract administration, which is primarily the responsibility of the procuring agency and is not for consideration under GAO's bid protest function.

This decision concerns two protests filed by American Indian Law Center, Inc. (AILC), concerning two contract awards made by the Bureau of Indian Affairs, Department of the Interior (Interior). Interior awarded one contract under request for proposals (RFP) No. BIA-K57-0016 to the American Indian Lawyer Training Program, Inc. (AILTP), for training services concerning Tribal Court paralegal/advocates. Interior awarded the other contract under RFP No. BIA-K51-0017 to the National American Indian Court Judges Association (NAICJA) for training services concerning Tribal Court judges and staff. The protester contends that both awards are improper because Interior failed to enforce the requirement in each RFP that the selected organizations must be 100-percent Indian-owned and controlled during contract performance.

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Both RFP's required offerors to satisfy the following requirement: "Your organization must be 100 percent Indian-owned and controlled during the period of the proposed program and [each offeror] must so certify to this fact in your proposal."

Regarding the award to AILTP, the protester states that AILTP is not 100-percent Indian-controlled because a 1980 AILTP publication listed five non-Indians as directors of the corporation. Interior advised the protester that AILTP had removed the non-Indians from the board of directors. In reply, the protester notes that AILTP publications continue to list non-Indians as directors and the protester asks our Office to resolve the discrepancy.

Concerning the award to NAICJA, the protester contends that two directors of NAICJA are non-Indians. Interior reports that only one director of NAICJA is not an Indian and NAICJA has forwarded to our Office a copy of that director's resignation. Interior also reports that the other person named by the protester, while not a director of NAICJA, is an officer (secretary) of the corporation. Although the protester concedes that the small measure of control exercised by the secretary of a corporation may be negligible, the effect is to reduce Indian control to less than 100 percent, contrary to the RFP's requirements. In response, Interior argues that the RFP's requirement is satisfied because a majority of the governing body (directors and officers) of NAICJA is Indian; thus, NAICJA is Indian-controlled.

To be eligible for award, under the subject RFP provision, the awardees only had to certify in their proposals that they would satisfy the RFP's requirement for Indian ownership and control during contract performance. There is no dispute that both awardee's satisfied that certification requirement, thus eliminating any basis for our Office to object to the awards.

Both awardees are obligated to comply with the unconditional commitments of their proposals. Whether

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both awardees fulfill their commitments is a matter of contract administration, which is primarily the responsibility of Interior and is not for consideration under our bid protest function. Dataproducts New England, Inc.; Honeywell Inc.; Tracor Aerospace, B-199024, January 9, 1981, 81-1 CPD 16. To the extent that the protest concerns contract administration, it is dismissed. However, to avoid the problem of understanding Interior's statement of its need for Indian control, we note that, in future solicitations, Interior could more carefully state the requirement.

The protests are denied in part and dismissed in part.

*for Milton F. Fowler*  
Comptroller General  
of the United States